

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Nicole McDaniels, et al. (See Next Page)

(b) County of Residence of First Listed Plaintiff Philadelphia
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Paul Messing, Esq., Kairys, Rudovsky, Messing & Feinberg, 718 Arch St., Ste. 501S, Phila., PA 19106 215-925-4400

DEFENDANTS

City of Philadelphia and PO Jermias Olivo

County of Residence of First Listed Defendant Philadelphia
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Armando Brigandi, City of Phila. Law Dept., 1515 Arch St., 14th Floor, Phila., PA 19102 215-683-5381

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|--|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl Ret Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/ Disabilities - Employment <input type="checkbox"/> 446 Amer. w/ Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 USC Sec. 1983

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions).

JUDGE

DOCKET NUMBER

DATE 05/19/2015 SIGNATURE OF ATTORNEY OF RECORD

Armando Brigandi, Esq.

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG JUDGE _____

NO. 1030

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA – DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 718 Arch Street, Suite 501S, Philadelphia, PA 19106

Address of Defendant: City of Philadelphia Law Department, 1515 Arch Street, 14th Floor, Philadelphia, PA 19102

Place of Accident, Incident or Transaction: 22nd Street and Glenwood Avenue, Philadelphia, PA
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)). Yes ☐ No ☐

Does this case involve multidistrict litigation possibilities?
RELATED CASE IF ANY:

Yes ☐ No ☐

Case Number: _____ Judge _____

Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒

CIVIL: (Place in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. Indemnity Contract, Marine Contract, and All
2. FELA
3. Jones Act – Personal Injury
4. Antitrust
5. Patent
6. Labor-Management Relations
7. ☒ Civil Rights
8. Habeas Corpus
9. Securities Act(s) Cases
10. Social Security Review Cases
11. All Other Federal Questions Cases (Please specify)

B. Diversity Jurisdiction Cases:

- | | |
|---|---|
| Other Contracts | 1. Insurance Contract and Other Contracts |
| 2. Airplane Personal Injury | |
| 3. Assault, Defamation | |
| 4. Marine Personal Injury | |
| 5. Motor Vehicle personal Injury | |
| 6. Other Personal Injury (Please specify) | |
| 7. Products Liability | |
| 8. Products liability - Asbestos | |
| 9. All other Diversity Cases | |
| (Please specify) | |

ARBITRATION CERTIFICATION

(Check appropriate Category)

I, Armando Brigandi, counsel of record do hereby certify:

☒ Pursuant to Local Rule 53.3 A. civil rights cases are excluded from arbitration.

☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

☐ Relief other than monetary damages is sought.

DATE: 05/19/2015

Armando Brigandi, Esquire
Attorney-at-Law

92208

Attorney I.D. #

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 05/19/2015

Armando Brigandi, Esquire
Attorney-at-Law

92208

Attorney I.D. #

5/19/2015
Date


Armando Brigandi, Esq.

City of Philadelphia
Attorney for

(215) 683-5381
Telephone

(215) 683-5397
FAX Number

armando.brigandi@phila.gov
E-mail Address

3. On May 15, 2015 the Amended Complaint was served on Petitioners at 1515 Arch Street, 14th Floor, Philadelphia, Pennsylvania.


4. Plaintiff alleges that on or about August 20, 2013, she sustained damages when her civil rights were violated by the defendants. (Exhibit A).

5. This action may be removed to this Court pursuant to 28 U.S.C. § 1441 since Plaintiff's Complaint contains allegations of violations of the plaintiff's Federal Civil Rights and seeks relief under 42 U.S.C. § 1983. (Exhibit A – Count I)

Wherefore, petitioners, Police Officer Jermias Olivo and City of Philadelphia, respectfully request that the captioned Complaint be removed to the United States District Court for the Eastern District of Pennsylvania.

Respectfully submitted,

Craig M. Straw
Chief Deputy City Solicitor



ARMANDO BRIGANDI
Divisional Deputy City Solicitor
Attorney I.D. No. 92208
1515 Arch Street, 14th Floor
Philadelphia, PA 19102
215-683-5381

Date: 5/14/2015

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA

NICOLE McDANIELS,	:	Civil Action
718 Arch Street, Suite 501S	:	
Philadelphia, PA 19106	:	NO: _____
As Administrator of the Estate of	:	
AARON LAMAR McDANIELS,	:	
and on behalf of decedent's survivors,	:	
NICOLE McDANIELS, and	:	
ANTHONY McDANIELS,	:	
Plaintiff	:	Formerly
	:	COURT OF COMMON PLEAS
V.	:	TRIAL DIVISION - CIVIL
	:	
CITY OF PHILADELPHIA and	:	
PO JERMIAS OLIVO	:	DECEMBER TERM, 2013
Individually and as a	:	
Philadelphia Police Officer	:	NO. 1030
1515 Arch Street	:	
Philadelphia, PA	:	
Defendant	:	

NOTICE OF FILING OF REMOVAL

TO: Paul Messing, Esquire
Kairys, Rudovsky, Messing & Feinberg
718 Arch Street, Suite 501S
Philadelphia, PA 19106

PLEASE TAKE NOTICE THAT on May 14, 2015, defendants, Police Officer Jermias Olivo and City of Philadelphia filed, in the office of the Clerk of the United States District Court for the Eastern District of Pennsylvania a verified Notice of Removal.

A copy of this Notice of Removal is attached hereto and is also being filed with the Clerk of the Court of Common Pleas of Philadelphia County, pursuant to Title 28, United States Code, Section 1446(e).



ARMANDO BRIGANDI

Divisional Deputy City Solicitor

Attorney I.D. No. 92208

City of Philadelphia Law Department

1515 Arch Street, 14th Floor

Philadelphia, PA 19102

215-683-5381

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA

NICOLE McDANIELS,	:	Civil Action
718 Arch Street, Suite 501S	:	
Philadelphia, PA 19106	:	NO: _____
As Administrator of the Estate of	:	
AARON LAMAR McDANIELS,	:	
and on behalf of decedent's survivors,	:	
NICOLE McDANIELS, and	:	
ANTHONY McDANIELS,	:	
Plaintiff	:	Formerly
	:	COURT OF COMMON PLEAS
V.	:	TRIAL DIVISION - CIVIL
	:	
CITY OF PHILADELPHIA and	:	
PO JERMIAS OLIVO	:	DECEMBER TERM, 2013
Individually and as a	:	
Philadelphia Police Officer	:	NO. 1030
1515 Arch Street	:	
Philadelphia, PA	:	
Defendant	:	

CERTIFICATE OF SERVICE

I, Armando Brigandi, Divisional Deputy City Solicitor, do hereby certify that a true and correct copy of the attached Notice of Removal has been served upon the following by First Class Mail, postpaid, on the date indicated below:

TO: Paul Messing, Esquire
Kairys, Rudovsky, Messing & Feinberg
718 Arch Street, Suite 501S
Philadelphia, PA 19106


ARMANDO BRIGANDI
Divisional Deputy City Solicitor
Attorney ID No. 92208
City of Philadelphia Law Department
1515 Arch Street, 14th Floor
Philadelphia, PA 19102
215-683-5381

Date: 05/19/2015

Exhibit “A”

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

PHILADELPHIA BAR ASSOCIATION
Lawyer Referral and Information Services
One Reading Center
Philadelphia, PA 19107
Telephone: (215) 238-6333

VISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demandanda y la notificacion. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en for escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demandanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI USTED NO TIENE ABOGADO, VAYA PERSONALMENTE O LLAME POR TELEFONO A LA OFICINA MENCIONADA A CONTINUACION. ESTA OFICINA LE PUEDE PROVEER LA INFORMACION NECESARIA PARA CONTRATAR A UN ABOGADO.

SI USTED CARECE DE LOS MEDIOS NECESARIOS PARA CONTRATAR A UN ABOGADO DICHA OFICINA LE PUEDE SUMINISTRAR LA INFORMACION NECESARIA ACERCA DE AQUELLAS AGENCIAS QUE OFRECEN SERVICIOS LEGALES A LAS PERSONAS QUE TIENEN DERECHO A RECIBIR TAL AYUDA GRATIS O A UNA CUOTA REDUCIDA.

ASOCIACION DE LICENCIADOS DE FILADELFIA
Servicio De Referencia E Informacion Legal
Uno Reading Centro
Filadelfia, Pennsylvania 19107
Telefono: (215) 238-6333

AMENDED COMPLAINT

Parties

1. Decedent, Aaron Lamar McDaniels, an African American male, resided at 1618 West Lehigh Avenue, Philadelphia. The decedent's date of birth was April 18, 1994, and he died on August 20, 2013, at the age of nineteen. Decedent was unmarried and had no children. Decedent is survived by his parents, Nicole McDaniels and Anthony McDaniels.

2. Plaintiff, Nicole McDaniels, is the Administrator of the Estate of Aaron Lamar McDaniels, Deceased. The address of the Estate is set forth above.

3. On August 28, 2013, the Register of Wills for Philadelphia County granted the plaintiff Letters of Administration at A3597-2013, naming her Administrator of the Estate of Aaron Lamar McDaniels, Deceased.

4. Defendant City of Philadelphia is a municipality of the Commonwealth of Pennsylvania and owns, operates, manages, directs and controls the Philadelphia Police Department which employs defendant Olivo.

5. Defendant Jermias Olivo, Badge Number 4357, was at all relevant times a Philadelphia Police Officer. He is being sued in his individual capacity.

6. Defendants are liable for the injuries and damages suffered by the plaintiff, as are more fully set forth herein.

Factual Allegations

7. On the early evening hours of August 20, 2013, the decedent, Aaron Lamar McDaniels, was a passenger in a vehicle operated by Kareem Gordon that was involved in an accident in the vicinity of 22nd Street and Glenwood Avenue in Philadelphia.

8. At that time, date and location, defendant Olivo arrived on the scene with his partner,

police officer Paul Camarote.

9. The operator, Mr. Gordon, fled the scene and was pursued by Officer Camarote.

10. Without cause or justification, defendant Olivo fired multiple gunshots at the decedent.

11. Decedent, Aaron Lamar McDaniels, sustained approximately 14 gunshot wounds that were caused by bullets fired by defendant Olivo.

12. Decedent suffered severe and fatal wounds from Olivo's bullets, including gun shot wounds to the chest, abdomen, and extremities.

13. Decedent was transported from the scene to Temple University Hospital where he was pronounced dead later the same day.

14. Decedent died as a result of the gun shot wounds inflicted by defendant Olivo.

15. Defendant Olivo fired his weapon intentionally and with the intent of using deadly force.

16. Defendant Olivo acted in reckless disregard of the risk of harm to Aaron Lamar McDaniels, which he knew or should have known to be highly probable, and with a conscious indifference to the consequences to the decedent.

17. Defendant Olivo did not have probable cause or any lawful basis to subject the decedent to the use of force and/or deadly force.

18. The actions and conduct of defendant Olivo violated generally accepted police practices and procedures and Philadelphia Police Department directives and practices regarding the pursuit of suspects, high speed chases, the use of force and the use of deadly force.

19. The acts of defendant Olivo were committed intentionally, negligently, without legal justification, cautious regard or due care, and/or with such wanton and reckless disregard of the

consequences as to show his negligent, conscious and/or deliberate indifference to the danger of harm and injury to the decedent.

20. Defendant Olivo acted wilfully, deliberately, maliciously, wontonly or with reckless disregard of the decedent's legal and statutory rights.

21. It was unreasonable for defendant Olivo to believe the use of deadly force was warranted, justified or reasonable at the time he fired his gun, and continued to discharge his firearm.

22. By his actions, defendant Olivo created the circumstances which resulted in the death of the decedent.

23. At no time did the decedent, Aaron Lamar McDaniels, commit any offense against the laws of the Commonwealth of Pennsylvania, the City of Philadelphia or the United States of America, or engage in any conduct that justified the actions of defendant Olivo.

24. Decedent, Aaron Lamar McDaniels, suffered multiple gun shot wounds which required emergency medical treatment and hospitalization, surgery, and ultimately, his death.

25. Decedent, Aaron Lamar McDaniels, suffered severe conscious pain and suffering.

26. The actions and inactions of defendant Olivo constituted willful misconduct and criminal conduct.

27. As a direct and proximate result of the actions and inactions of all defendants, the decedent suffered pain, fear, horror, anxiety, embarrassment, loss of liberty, confinement, physical and psychological injuries, the loss of the enjoyment of life, and death, all to his great detriment and loss.

28. As a direct and proximate cause of defendant Olivo's actions, the decedent suffered loss of income and deprivation of other liberty interests to his great financial detriment and loss.

29. Decedent is survived by his parents, Nicole McDaniels and Anthony McDaniels, both of whom he helped to support by providing or contributing to their food, clothing, shelter, medical care, education, entertainment, recreation and/or gifts.

30. As a direct and proximate cause of defendant Olivo's actions, Nicole McDaniels and Anthony McDaniels, suffered, continue to suffer, and will suffer in the future, mental anguish, humiliation, embarrassment, nightmares, anxiety, fear and loss of familial companionship of their son.

Allegations Related to Defendant Olivo's Misconduct History

31. Paragraphs 1-30 of the Complaint are incorporated herein by reference.

32. Defendant Olivo joined the Philadelphia Police Department (PPD) prior to 2009.

33. Since Olivo joined the PPD, he has been the subject of multiple complaints of misconduct as a police officer.

34. Since Olivo joined the PPD, he has been involved in at least two previous incidents in which he had improperly discharged his police-issued firearm.

35. On or about October 22, 2009, a citizen complaint to the PPD asserted that Olivo had improperly stopped a motor vehicle and subjected the occupants, who were African American men, to physical abuse and verbal abuse, included racial epithets.

36. The Internal Affairs Division (IAD) of the PPD failed to conduct a timely and proper investigation of the October 22, 2009 incident and failed to take remedial or disciplinary action against defendant Olivo.

37. On or about December 12, 2011, Olivo improperly stopped a motor vehicle and, without cause or justification and in violation of accepted police practices and procedures, shot a passenger, Mr. Albert Jones, an African American, multiple times, inflicting serious bodily injury.

38. The Internal Affairs Division (IAD) of the PPD failed to conduct a timely and proper investigation of the December 12, 2011 incident and failed to take remedial or disciplinary action against defendant Olivo.

39. On or about March 1, 2012, Olivo, participating in a baseless pedestrian stop of a citizen, without cause or justification and in violation of accepted police practices and procedures, shot the pedestrian, Mr. Torey Baker, an African American, multiple times, inflicting serious bodily injury.

40. The Internal Affairs Division (IAD) of the PPD failed to conduct a timely and proper investigation of the March 1, 2012 incident and failed to take remedial or disciplinary action against defendant Olivo.

41. On or about May 3, 2012, a citizen complaint to the PPD asserted that Olivo had improperly stopped and searched a motor vehicle, stole the occupants' money, and subjected the occupants, who were African American, to mistreatment.

42. The Internal Affairs Division (IAD) of the PPD failed to conduct a timely and proper investigation of the May 3, 2012 incident and failed to take remedial or disciplinary action against defendant Olivo.

43. On or about February 15, 2014, Olivo's spouse, Carmen Olivo, reported that she was physically assaulted by Olivo.

44. The Internal Affairs Division (IAD) of the PPD failed to conduct a timely and proper investigation of the February 15, 2014 incident and failed to take remedial or disciplinary action against defendant Olivo.

45. On or about March 24, 2014, Olivo's spouse, Carmen Olivo, reported that Olivo had abused his authority as a police officer to improperly access confidential information about her whereabouts, resulting in the slashing of the tires of her vehicle.

46. The Internal Affairs Division (IAD) of the PPD failed to conduct a timely and proper investigation of the March 24, 2014 incident and failed to take remedial or disciplinary action against defendant Olivo.

47. On or about April 10, 2014, Olivo's spouse, Carmen Olivo, reported that Olivo confronted her at a court proceeding related to Olivo's alleged violation of a Protection From Abuse Order, and attempted to frighten and intimidate Carmen Olivo.

48. The Internal Affairs Division (IAD) of the PPD failed to conduct a timely and proper investigation of the April 10, 2014 incident and failed to take remedial or disciplinary action against defendant Olivo.

49. On September 29, 2014, Olivo was arrested and charged with burglary, criminal trespass, terroristic threats, simple assault and possessing an instrument of crime. The criminal charges are pending.

50. The Internal Affairs Division (IAD) of the PPD failed to conduct a timely and proper investigation of the September 29, 2014 incident and failed to take remedial or disciplinary action against defendant Olivo.

51. On May 6, 2015, Olivo was arrested and charged with intimidation of a witness, harassment, unlawful use of computers and related offenses. The criminal charges are pending.

52. Defendant City of Philadelphia failed to take any remedial or disciplinary action against Olivo prior to the shooting death of Aaron Lamar McDaniels, and that failure was a substantial factor

and/or the proximate cause leading to the death of Aaron Lamar McDaniels and the harms suffered by the plaintiff.

53. Even after the death of Aaron Lamar McDaniels, and defendant Olivo continued to engage in misconduct and criminal behavior, the City failed to take any remedial or disciplinary action against Olivo prior to the shooting death of Aaron Lamar McDaniels, and that failure was a substantial factor and/or the proximate cause leading to the death of Aaron Lamar McDaniels and the harms suffered by the plaintiff.

54. All defendants engaged in the aforesaid conduct for the purpose of violating the decedent's constitutional and statutory rights by subjecting the decedent to the unreasonable, excessive use of force and deadly force.

Allegations Related to Police Shootings in Philadelphia

55. From 2007-2013, Philadelphia police officers shot more than 400 individuals, a rate of police shootings that substantially exceeds the national average.

56. The City and its decision makers, Mayor Michael Nutter and Police Commissioner Charles Ramsey, failed to take action to control and/or reduce the inappropriate and excessive use of deadly force by PPD officers, causing numerous injuries and deaths, including the death of Aaron Lamar McDaniels.

57. In August 2013 – within days of the death of Aaron Lamar McDaniels – Philadelphia Police Commissioner Charles Ramsey asked the United States Department of Justice (DOJ) to investigate the high incidence of police shootings and related issues in the City of Philadelphia.

58. On March 24, 2015, the DOJ issued “An Assessment of Deadly Force in the Philadelphia Police Department.” The DOJ findings, which relate to the seven year period leading up to an including the shooting death of Aaron Lamar McDaniels, include the following:

- a. PPD officers do not receive regular, consistent training on the department’s deadly force policy;
- b. PPD officers are not adequately trained on the use of deadly force;
- c. PPD’s use of force policies are fragmented and confusing;
- d. PPD officers are not provided sufficient alternatives to the use of deadly force;
- e. PPD officers are not adequately trained on techniques to de-escalate citizen encounters and thus reduce the use of deadly force;
- f. The department’s disciplinary mechanism is inconsistent, subject to chronic delays, and marred by inadequate investigations;
- g. Even in cases where officers were found to have violated department policy during a shooting incident, 73% of those officers were not suspended or terminated; and
- h. In a City where Blacks and Whites each make up about 45% of the populations, almost 60% of the officers involved in shootings from 2007-2013 were White, while 81% of the involved suspects were Black.

59. The City of Philadelphia failed to adequately investigate the misconduct allegations against Olivo, including but not limited to the two prior shooting incidents.

60. The City failed to take any remedial or disciplinary actions against Olivo in connection with the misconduct allegations against Olivo, including but not limited to the two prior shooting incidents.

61. The City’s failure to take appropriate remedial or disciplinary action against Olivo was a substantial factor in causing the death of Aaron Lamar McDaniels.

62. The City's failure to properly train, supervise and/or discipline Olivo was a substantial factor in causing the death of Aaron Lamar McDaniels.

63. The City's failure to take appropriate actions to reduce the number of police shootings in Philadelphia as later found by the DOJ was a substantial factor in causing the death of Aaron Lamar McDaniels.

64. The failure of the City and its decision makers, Mayor Michael Nutter and Police Commissioner Charles Ramsey, control, reduce and/or remedy the inappropriate and excessive use of deadly force by PPD officers, causing numerous injuries and deaths, including the death of Aaron Lamar McDaniels.

Allegations Related to the Estate of Aaron Lamar McDaniels

65. Decedent, Aaron Lamar McDaniels, did not bring an action against defendant Olivo for damages for the injuries causing his death, during his lifetime.

66. Plaintiff brings this action as Administrator of the Estate of Aaron Lamar McDaniels, and on behalf of all others entitled to recover under law, and under the Pennsylvania Wrongful Death Act.

67. Nicole McDaniels and Anthony McDaniels, by reason of the Aaron Lamar McDaniels' injury and death, have suffered pecuniary loss, to their great detriment, and have or will incur expenses for:

- a. The costs of the decedent's medical, surgical, hospital and nursing bills;
- b. The costs of the decedent's funeral expenses;
- c. The costs of the decedent's headstone; and
- d. The costs of administering the decedent's estate.

68. As a result of the death of Aaron Lamar McDaniels, his parents, Nicole McDaniels and Anthony McDaniels, have been deprived of the care, comfort, aid, society, affection, support, companionship, services, guidance, tutelage, maintenance, and assistance of decedent for the remainder of his life, all to their great detriment and loss.

69. By reason of the death of the decedent, Aaron Lamar McDaniels, his parents have suffered pecuniary loss, to their great detriment, including contributions for:

- a. Food;
- b. Clothing;
- c. Shelter;
- d. Medical care;
- e. Education;
- f. Entertainment;
- g. Recreation; and
- h. Gifts.

70. Plaintiff also sues as Administrator of the Estate on behalf of the Estate of Aaron Lamar McDaniels, under and by virtue of the Pennsylvania Survival Statute, and claims damages suffered by the Estate by reason of the death of the decedent, as well as pain, suffering, inconvenience and pecuniary loss the decedent underwent prior to his death.

71. Under 42 Pa.C.S. § 8302, all the claims Aaron Lamar McDaniels would have been able to bring, had he survived his injuries, survive for the plaintiff to prosecute on behalf of decedent's Estate.

72. As a direct and proximate cause of defendant's actions and inactions, the decedent, prior to his death, was rendered sick, sore, and disordered and was made to undergo great physical pain and mental anguish which resulted in his death, as well as loss of earning power and earning potential, loss of his investments, default on his financial obligations, total deprivation of the normal activities, pursuits and pleasures of life, and loss of life.

**FIRST CAUSE OF ACTION
FEDERAL CIVIL RIGHTS VIOLATIONS**

73. Plaintiff incorporates by reference paragraphs 1-72 of the instant Complaint.

74. As a direct and proximate result of all defendants' conduct, committed under color of state law, the decedent, Aaron Lamar McDaniels, was deprived of the right to be free from the unreasonable use of force and deadly force, the right to be secure in ones' person and property and to due process of law. As a result, Mr. McDaniels and his surviving parents suffered and continue to suffer harm in violation of rights under the laws and Constitution of the United States, in particular the Fourth and Fourteenth Amendments, and 42 U.S.C. §1983.

75. As a direct and proximate result of the acts of all defendants, the plaintiff sustained injuries, emotional harm, loss of liberty, death and financial losses, all to his detriment and harm.

76. Defendant City of Philadelphia has encouraged, tolerated, ratified and has been deliberately indifferent to the following patterns, practices and customs and to the need for more or different training, supervision, investigation or discipline in the areas of:

- a. The unreasonable use of force and deadly force by police officers;
- b. The proper exercise of police powers, including but not limited to the unreasonable use of force and deadly force;

- c. The monitoring of officers whom it knew or should have known were suffering from emotional and/or psychological problems that impaired their ability to function as officers;
- d. The failure to identify and take remedial or disciplinary action against police officers who were the subject of prior civilian or internal complaints of misconduct including but not limited to the improper use of force, deadly force, and the discharge of firearms;
- e. Police officers' use of their status as police officers to employ the use of force and deadly force, or to achieve ends not reasonably related to their police duties;
- f. Police officers' use of their status as police officers to employ the use of force and deadly force, invoke the Code of Silence, or to achieve ends not reasonably related to police duties;
- g. The failure of police officers to follow established policies, procedures, directives and instructions regarding the use of force and deadly force under such circumstances as presented in this case;
- h. The refusal of police officers to intervene when other officers violate the rights of citizens in their presence; and
- i. The refusal of police officers to report or provide information concerning the misconduct of other police officers, a custom or practice known as the "Code of Silence."

77. Defendant City of Philadelphia failed to properly sanction or discipline officers, who are aware of and conceal and/or aid and abet violations of constitutional rights of individuals by other Philadelphia Police Officers, thereby causing and encouraging Philadelphia police, including the defendant officer in this case, to violate the rights of citizens such as the plaintiff.

78. Defendant City of Philadelphia is deliberately indifferent to the need to train, supervise and discipline police officers. The Internal Affairs Division (IAD) of the Philadelphia Police Department (PPD) fails to provide an internal disciplinary mechanism that imposes meaningful disciplinary and remedial actions in the following respects:

- a. There are excessive and chronic delays in resolving disciplinary complaints;
- b. There is a lack of consistent, rational and meaningful disciplinary and remedial actions;

- c. There is a failure to effectively discipline substantial numbers of officers who were found to have engaged in misconduct.
- d. The PPD's internal investigatory process has fallen below accepted practices and is arbitrary and inconsistent;
- e. The PPD discipline, as practiced, is incident based rather than progressive. Thus, repeat violators are not being penalized in proportion to the number of violations.
- f. The conduct of IAD investigations demonstrates that PPD internal affairs personnel are not adequately trained and supervised in the proper conduct of such investigations;
- g. A global analysis of IAD's investigatory procedures indicates a pattern of administrative conduct where the benefit of the doubt is given to the officer rather than the complainant;
- h. There are serious deficiencies in the quality of IAD investigations and the validity of the IAD findings and conclusions;
- i. The PPD lacks an effective early warning system to identify, track and monitor "problem" officers;
- j. IAD frequently fails to interview available eyewitnesses to incidents involving citizen complaints of misconduct. The interviews that are conducted by IAD are below acceptable standards of police practice and fail to address key issues in the cases;
- k. IAD fails to acknowledge the disproportionate and extreme use of force used by police officers in the investigation of citizen complaints and fails to properly categorize the police officers' misconduct in those cases as an impermissible use of force;
- l. Despite the fact that defendant Olivo had amassed a large number of serious misconduct complaints in only a few years on the force, the officer stayed well below the radar of an early warning system;
- m. Despite no fewer than two prior incidents in which defendant Olivo shot civilians, the PPD took no meaningful disciplinary or remedial actions and took no meaningful steps to more closely monitor, retrain and supervise the officer;
- n. The PPD did nothing to respond meaningfully to the red flags evidenced in defendant Olivo's and no meaningful disciplinary action, positive corrective supervisory and/or training measures were undertaken;

o. For all the reasons set forth in the DOJ report “An Assessment of Deadly Force in the Philadelphia Police Department,” the PPD fails to properly train, supervise, investigate, monitor and discipline officers on the use of deadly force.

79. Defendants have by the above described actions deprived the decedent and the plaintiff of rights secured by the Fourth and Fourteenth Amendments to the United States Constitution in violation of 42 U.S.C. §1983.

**SECOND CAUSE OF ACTION
SUPPLEMENTAL STATE CLAIMS**

80. Plaintiff incorporates by reference paragraphs 1-79 of the instant Complaint.

**COUNT I
ASSAULT AND BATTERY**

81. On or about August 20, 2013, defendant Olivo did knowingly, intentionally, wilfully, negligently, maliciously and/or recklessly commit an assault and battery upon the decedent, Aaron Lamar McDaniels.

82. Defendant Olivo did place the decedent, Aaron Lamar McDaniels, in fear of imminent, unpermitted, unprivileged, offensive bodily contact and did, in fact, subject him to such bodily contact.

83. As a result of the defendant’s actions and conduct, the decedent suffered physical injuries, pain and suffering, emotional distress, financial losses, and death.

84. The actions and conduct of the defendant officer exceeded the normal standards of decent conduct and were wilful, malicious, oppressive, outrageous and unjustifiable and, therefore, punitive damages are necessary and appropriate.

85. The acts of defendant Olivo, as set forth above, constituted the torts of assault and battery, all to the decedent’s great detriment and loss.

COUNT II
OUTRAGEOUS CONDUCT CAUSING SEVERE EMOTIONAL DISTRESS

86. Plaintiff incorporates by reference paragraphs 1-85 of the instant Complaint.

87. On or about August 20, 2013, defendant Olivo, by extreme and outrageous conduct, intentionally or recklessly caused severe emotional distress to the decedent, Aaron Lamar McDaniels.

88. The acts and omissions of defendant Olivo as alleged in the preceding paragraphs, constitute the tort of Outrageous Conduct Causing Severe Emotional Distress, all to the decedent's great detriment and loss.

89. As a result of defendant Olivo's actions and conduct, the decedent suffered physical injuries, pain and suffering, emotional distress, related financial losses and death.

90. The actions of the defendant exceeded the normal standards of decent conduct and were wilful, malicious, oppressive, outrageous and unjustifiable and, therefore, punitive damages are necessary and appropriate.

COUNT III
PUNITIVE DAMAGES

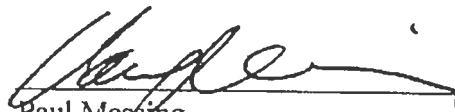
91. Plaintiff incorporates by reference paragraphs 1-90 of the instant Complaint.

92. The actions and conduct of defendant Olivo were malicious, wanton, willful, reckless and/or intentionally designed to inflict grievous bodily harm, mental distress and/or death upon the decedent.

93. As a result of the malicious, wanton, willful, reckless and intentional conduct of defendant Olivo, the plaintiff demands punitive damages.

WHEREFORE, the plaintiff requests the following relief:

- a. Compensatory damages as to all defendants in excess of \$150,000.00;
- b. Punitive damages as to the individual defendant in excess of \$150,000.00;
- c. Reasonable attorney's fees and costs as to all defendants;
- d. Such other declaratory and further relief as appears reasonable and just including, but not limited to, a judgment that the City of Philadelphia has failed to properly train, supervise and discipline police officers on the use of force and deadly force and is deliberately indifferent to a departmental disciplinary mechanism that is fundamentally ineffective, inadequate and unpredictable; and
- e. A jury trial as to each defendant and as to each count.



Paul Messing

Attorney ID No. 17749

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Counsel for Plaintiff

VERIFICATION

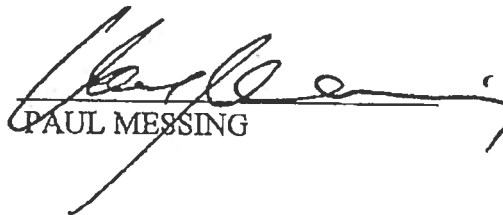
The facts set forth in the foregoing complaint are true and correct to the best of the undersigned's knowledge, information, and belief, and are verified subject to the penalties for unsworn falsification to authorities under Pennsylvania Crimes Code §4904 (18 Pa. C.S. § 4904).

Date: 5-14-15


NICOLE McDANIELS

VERIFICATION

I, Paul Messing, counsel for the plaintiff in this matter, verify that the statements set forth in the foregoing Amended Complaint are true and correct to the best of my knowledge, information and belief. I understand that the statements in the document are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.


PAUL MESSING

DATE: 5/2/15